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2 **FEDERAL ELECTION COMMISSION**  
3 **FACTUAL AND LEGAL ANALYSIS**  
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5 RESPONDENT: James Oberweis

MUR 5979

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8 **I. INTRODUCTION**

9 This matter was generated by a complaint filed with the Federal Election  
10 Commission ("Commission") by the Democratic Congressional Campaign Committee  
11 pursuant to 2 U.S.C. § 437g(a)(1).

12 In accordance with the Millionaires' Amendment of the Bipartisan Campaign  
13 Finance Reform Act, whenever a candidate for the United States House of  
14 Representatives makes or obligated to make an aggregate amount of expenditures from  
15 personal funds in excess of \$350,000 in connection with any election, the candidate or his  
16 authorized committee must notify the Commission, along with each opposing candidate  
17 in the same election, by filing a Form 10 with the Commission within twenty-four hours  
18 after exceeding the threshold. 2 U.S.C. § 441a-1(b)(1)(C); 11 C.F.R. § 400.21(b).<sup>1</sup>

19 The Committee, in response, argues that the plain reading of the statute and  
20 regulations tie the notification requirements to an "election" and not an "election cycle,"  
21 such that the Millionaires' Amendment triggers when a candidate makes expenditures  
22 from personal funds in excess of \$350,000 in connection with any "election" and the

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<sup>1</sup> For each additional expenditure of \$10,000 or more, the candidate is required to notify the Commission and each candidate in the same election, and the national party of each such candidate in a Form 10 filing within twenty-four hours of the time such expenditure is made. 2 U.S.C. § 441a-1(b)(1)(F); 11 C.F.R. § 400.22(b).

1 special general and general elections by definition are separate "elections." *See* Response  
2 at 6. *See also* 2 U.S.C. § 441a-1(b)(1)(C). The Committee also argues that it exercised  
3 due diligence in seeking advice from the Reports Analysis Division ("RAD") to its  
4 detriment. *Id.* Therefore, it asserts that the Commission should be estopped from  
5 proceeding against it in this matter since it followed the advice provided by RAD. *Id.*

6 On June 26, 2008, the U.S. Supreme Court ruled that the Millionaires'  
7 Amendment and its related reporting requirements are unconstitutional. *Davis v. FEC*,  
8 128 S. Ct. 2759 (2008). The statutory provisions pertaining to the Millionaires'  
9 Amendment were voided by *Davis*. Accordingly, we dismiss the complaint and close the  
10 file in this matter.

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